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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/412,140 | 10/05/1999 | CLIVE SMITH | 1062-104.US | 9266 |

7590 02/11/2004

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EXAMINER

TRAN, CON P

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2644

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/412,140

Applicant(s)

SMITH, CLIVE

Examiner

Con P. Tran

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 2-3, 6-11, and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5 and 12-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of invention I, claims 1, 4-5, and 12-7 in Paper No. 2 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. **Claim 1** is rejected under 35 U.S.C. 102(e) as being anticipated by Grasfield et al. (hereinafter, "Grasfield") U.S. Patent 5,825,895.

Regarding **claim 1**, Grasfield teaches a medical diagnostic and communications apparatus with audio output (see Fig. 2, 12, 12C, and respective portions of the specification), comprising:

electronic processing means (102, Fig. 12) for processing stethoscope signals (from chestpiece 12) and secondary audio signals (e.g., recorded signal from transceiver 120 that is plugged into transceiver interface 114; col. 12, line 51 col. 13, line 12);

an electronic stethoscope sensing means (microphone 54, Fig. 12) contained within a housing for transducing body sounds to electronic signals, operatively connected to the electronic processing means (col. 12, lines 29-39) ;

one or more secondary audio signal sources operatively connected to electronic processing means (through transceiver interface 114; col. 12, lines 51-61);

common audio output means (speaker 70, col. 12, lines 29-39) connected to electronic processing means to convert electronic stethoscope signals or secondary audio signals to acoustic output, said sounds being produced separately or mixed (col. 12, line 51 - col. 13, line 12).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claim 17** is rejected under 35 U.S.C. 102(b) as being anticipated by Villa-Real U.S. Patent 4,320,767.

Regarding **claim 17**, Villa-Real teaches a medical diagnostic and communications apparatus comprising an electronic stethoscope sensor (acoustical sensor 1; col. 2, lines 34-53; Fig. 1) physically attached via mounting means to, and operatively connected to, electronic processing means comprising a handheld computer (col. 11, line 55 col. 12, line 6) containing audio driver means (linear amplifier 112, Fig. 17, col. 29, lines 24-31) for processing and producing stethoscope sounds from said sensor (1, Fig. 8, col. 23, lines 27-32).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 4-5, 12-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Grasfield et al. (hereinafter, "Grasfield") U.S. Patent 5,825,895 in view of Villa-Real U.S. Patent 4,320,767.

Regarding **claim 4**, Grasfield teaches a medical diagnostic and communications apparatus as in Claim 1. However, Grasfield does not explicitly disclose comprising physiological measurement means which produce physiological measurement results, the results being converted to speech for output via the common audio output means. Villa-Real teaches function key for speech numbered (22) of block (124, Fig. 19), which when depressed will enable the system to activate the synthesized speech generator (135) through the microprocessor and control circuits to the speaker controls in order that the data retrieved can be heard through either the internal or external speakers (Fig. 19, col. 32, lines 50-56).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to incorporate the speech function of Villa-Real teaching with Grasfield for purpose of having analog and digital visual display means coordinated with audio amplification capabilities for easy triple verification of relevant data, as suggested by Villa-Real in column 6, lines 17-20.

Regarding **claim 5**, Grasfield further teaches a medical diagnostic and communications apparatus as in Claim 4, wherein the physiological measurement means perform physiological measurements heart rate as derived from electronic stethoscope sensor signal (col. 2, lines 34-53).

Regarding **claims 12-13**, Villa-Real further teaches a medical diagnostic and communications apparatus as in Claim 1, further including display means (LED, LCD); magnifying means for magnifying the display means (col. 10, lines 59-64).

Regarding **claim 14**, Villa-Real further teaches a medical diagnostic and communications apparatus as in Claim 1, wherein the electronic processing means includes digital memory means for storing software programs downloaded via digital communications means (col. 15, lines 22-34).

Regarding **claim 15**, Villa-Real further teaches a medical diagnostic and communications apparatus as in Claim 1 wherein the electronic processing means comprises a handheld digital computer (col. 11, line 55 col. 12, line 6).

Regarding **claim 16**, Grasfield further teaches a medical diagnostic and communications apparatus as in Claim 15, further containing wireless digital communications means to access remote medical information storage and retrieval means (col. 12, lines 60-65).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Con P. Tran, whose telephone number is (703) 305-2341. The examiner can normally be reached on M - F (8:30 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service Office at telephone number (703) 306-0377.

cpt CPJ
February 6, 2004


MINSUN OH HARVEY
PRIMARY EXAMINER